**PUBLIC PROSECUTOR**

**v.**

**SEOW KHOON KWEE**

HIGH COURT, SINGAPORE
LP THEAN J
CHAO HICK TIN JC
[CRIMINAL CASE NO. 46 OF 1986]
14 OCTOBER 1988

***CRIMINAL PROCEDURE:*** *Burden of proof at end of prosecution's case - Inference from primary facts - Penal Code - Charge of murder - Defence of self defence - Time to have recourse to protection of authorities - Provocation - Wound must be inflicted by way of a retaliation - Deprivation of self-control - Sudden fight - Necessity to show lack of premeditation to succeed on defence of sudden fight.*

The accused a detainee of the Medium Security Prison, Changi, Singapore ("MSP") was charged for the murder of a co-detainee at about 9 a.m. on 19 March 1986 at the premises of the MSP.

The evidence showed that on 18 March 1986 there was a quarrel between the accused and deceased which arose out of the deceased calling the accused "Mee Tai Lang" to which the accused took exception. The deceased was found by the warder to be involved in a quarrel and was put in insolation for some 4 hours. In the meantime the accused knocked a piece of glass which he had found into a 7" to 8" long weapon shaped into a knife with a pointed end, which weapon he hid.

On 19 March 1986 the detainee and the deceased were exercising near the basketball court and they stared at each other. The accused then went to bring out the weapon and returned to the basketball court holding the same. The deceased and detainee then stared at each other and the deceased then asked the accused "What" and the accused replied "Can we talk". The deceased replied "Do you really want it" and punched the accused in the left eye. Both then fought, the deceased with his barehands and the accused with the weapon held in the right hand with a towel. The deceased sustained multiple stab wounds with one fatal wound at the chest - these were caused by the weapon. The accused sustained a blueblack left eye caused by the deceased's first punch and a deep cut in his right hand by the weapon after the fight, the weapon broke into 3 pieces.

The fatal wound inflicted was directed from front to back, downwards and medially.

At the close of the prosecution case the accused submitted that there was no case to answer and that the prosecution had failed to establish the essential elements of the charge, namely:

i) the fact that the death of the deceased was caused by or in consequence of an act or conduct of the accused; and

ii) the fact that the accused had the requisite intention required under s. 302 of the Penal Code.

in that:

a) for (i) above there was no cogent evidence that the accused had beyond reasonable doubt caused the fatal wound: and

b) for (ii) above the fact that the deceased punched and provoked the accused which caused the accused to lose self-control and react in a manner which was proportionate to the degree of provocation and thus the prosecution has not adduced any cogent evidence to prove the requisite intention.

The Court at this stage ruled for the prosecution and the defence was called. In his evidence, the accused stated that he was afraid of the deceased assaulting or beating him as the deceased was bigger and stronger and he also knew that the deceased had beaten other detainees.

The defence submitted that the wound could have been caused by either the accused thrusting the weapon into the deceased's chest or by the deceased rushing into the weapon.

**Held:**

**[1]** Following *Haw Tua Tau* the defence was to be called at the end of the prosecution's case as the prosecution has adduced evidence the primary facts which are not inherently incredible and which if accepted would establish the essential elements of the alleged offence.

**[2]** The Court should not decide at the end of the prosecution's case whether the prosecution has proved beyond reasonable doubt that the accused is guilty of the charge.

**[3]** When the Court called for the defence the Court acted on the presumptions:

a) that all evidence of primary facts are true;

b) there would be nothing to displace the inferences as to further facts or to the state of mind of the accused which would reasonably be drawn from the primary facts in the absence of further explanation.

**[4]** The accused's version of how the fatal wound was inflicted is rejected - as the deceased being bare handed could not have rushed towards the accused who was armed.

**[5]** Even if the fatal wound was inflicted by the deceased charging at the accused when the accused was holding the weapon rigidly towards the deceased, the accused would still have stabbed the deceased.

**[6]** That on the facts and in light of the fatal wound the accused stabbed the deceased in the course of the struggle between them.

**[7]** The fact that the accused used a piece of glass of about 30 cm in length, long and quite thick triangular in shape with a pointed end shaped very much like a knife and able to cut shows that the glass can be used to kill a person or cause bodily injury likely to cause death.

**[8]** The facts also show that the fatal wound was delivered with some force.

**[9]** In light of (7) and (8) above the Court is satisfied beyond reasonable doubt that the accused had the necessary intention or knowledge.

**[10]** The accused failed on the defence of the right of private defence as he had time to have recourse to the protection of the prison officers from the time this right commenced when he first saw the accused that fateful morning at the basketball court - Section 99(3) and 102 of the Penal Code.

**[11]** The accused failed on the defence of grave and sudden provocation as the fatal injury on the deceased cannot in the circumstances be said to be inflicted by the accused by way of retaliation whilst the accused was deprived of the power of self-control.

**[12]** Following *Kirpal Singh v. The State* to afford the accused a defence, the death must be caused without premeditation in a sudden fight.

**[13]** Although the inference of premeditation could be drawn from the accused making the weapon, the accused in his explanation of being fearful of the deceased beating the accused as a result of the deceased's detention in the isolation ward, the deceased being bigger and stronger than the accused and of the deceased having beaten up other detainees and hence had armed himself with the weapon for self-protection which the Court accepts as plausible and not entirely groundless had displaced the inference of premeditation.

**[14]** The accused is therefore guilty and convicted of the offence of culpable homicide not amounting to murder.

*[Convicted of culpable homicide not amounting to murder.]*

**Cases referred to:**
*Haw Tua Tau v. Public Prosecutor [1981] CLJ (Rep) 11*
*Kirpal Singh v. The State [1951] AIR 38 Punjab 137*

**Legislation referred to:**
Penal Code (Cap 103) [Sing] ss. 96, 99(3), 100, 102, 299, 300, 302 & 304(b)
Criminal Procedure Code [Sing] s. 121(6)

**JUDGMENT**

**LP Thean J:**

The accused, Seow Khoon Kwee, is charged for having committed murder by causing the death of one Quek Sim Beng ("the deceased") at about 9 a.m. on 19 March 1986 at the Medium Security Prison, Changi, Singapore. The charge against him is as follows.

> You, Seow Khoon Kwee, are charged on or about 19 March 1986 at about 9.00 a.m. at the basketball court in the Medium Security Prison, Singapore, did commit murder by causing the death of one Quek Sim Beng, and you have thereby committed an offence punishable under s. 302 of the Penal Code (Chapter 103).

The accused is a detainee at the Medium Security Prison under the Criminal Law (Temporary Provisions) Act; he was also known as "Boo Cheong" and "Sok Eh". So also was the deceased a detainee there prior to his death; he was known as "Ah Lek". The area or enclosure in which they and other detainees were detained is known as "G" Hall.

On 18 March 1986 at about 12 noon, one Abdul Rahman bin Anan, the prison warder on duty, sounded the bell calling for all the detainees of "G" Hall to assemble at the mess hall for the mid-day muster, and thereupon, all the detainees, totalling 109, assembled there. After they had assembled and sat down, Abdul Rahman went to the gate to wait for the arrival of rehabilitation officer, Loh Yew Wah, who was to be there to take the attendance of the detainees. After Abdul Rahman had left, one of the detainees called the accused "Sok Eh". The deceased interrupted by saying that the accused was not "Sok Eh" but "Mee Tai Lang", which is the name of a Japanese character in a television serial. On hearing this the accused was annoyed and asked the deceased not to change his name. The deceased in reply said that since the accused could not take a joke, he, the deceased, would in future not joke with him. The accused stood up and called out to the deceased loudly to go to the back of the hall. They were each about to move to the back but were restrained by the other detainees. Abdul Rahman heard a commotion and went back to the mess hall but found nothing unusual. He left and went to the gate again. After a short while both the accused and the deceased stood up again; the accused again asked the deceased to go to the back, and both of them

were again restrained from going to the back. Abdul Rahman again heard a commotion, and he rushed back to the mess hall but found nothing unusual. Then, for the third time, he left the mess hall and went to the gate. According to him he heard a third commotion whereupon he rushed to the mess hall and this time he saw the deceased standing and he appeared to be angry. He asked the deceased what the matter was, but the latter kept quiet; so did the other detainees who were also being asked.

The prison warder then left and waited at the gate for the arrival of Loh Yew Wah. When the latter arrived, Abdul Rahman told him that he suspected the deceased might have been involved in a quarrel or fight with other detainees. Loh then questioned the deceased who denied that he was involved in any quarrel or fight. Loh also conducted a body search on the deceased to find out whether he had sustained any injury or had any weapon on him; he did not find any injury or weapon. At about that time, assistant superintendent of prisons, Neo Guan Chuan, arrived and Loh reported the matter to him. Neo then took the attendance of the detainees, and thereafter he instructed Loh to carry out a body search on all the detainees, and he brought the deceased to his office for further questioning. As instructed, Loh conducted a body search on all the other detainees to see if any of them had sustained any injury or had any weapon on them but did not find any.

Neo took the deceased to his office and interviewed him; the deceased persistently denied that he was involved in any fight or quarrel. After the interview he placed the deceased in an isolation ward. Later Loh went to see Neo who instructed him to interview the deceased also. Loh took the deceased out from the isolation ward and interviewed him. He initially gave a bare denial that he was involved in any fight or quarrel but later said that one of the detainees called another detainee "Ah Soh" and the latter was unhappy and a quarrel between them ensued. Loh then told the deceased that he would recommend the deceased's release from the isolation ward on one condition, namely, that the deceased would be co-operative and assist him in ascertaining who were involved in the quarrel, which the deceased agreed. Loh then reported to Neo and made his recommendation. At about 5 p.m. the deceased was released from the isolation ward and returned to "G" Hall. No further incident took place that day.

On 19 March 1986 at about 9 a.m. a detainee Gay Choon Lai, was in the vicinity of the resting shed near the basketball court. He saw the deceased jogging alone round the basketball court. He then saw the deceased talking to the accused; the deceased was facing him and the accused's back was towards him. The accused was holding in his right hand a piece of glass which according to Gay was about 7 to 8 inches long. Gay heard the deceased speaking to the accused aloud in Hokkien with words to this effect: "Do you really want it?" Following this the deceased gave a punch to the accused on his face whereupon the accused was thrown backwards. The deceased rushed forward and the two of them fought with each other. The deceased then stepped backwards clutching his chest and blood was oozing out. He collapsed at the basketball court.

Neo Guan Chuan heard of the fight at about 9.15 a.m. from the rehabilitation officer, Tay Peng Yue, and immediately went to the scene. There, he saw the deceased lying on his back on the basketball court; he was barebodied, wearing only a pair of shorts. He could feel the deceased's pulse. He then instructed all the detainees to assemble at the mess hall, and got in touch with the other assistant superintendent of prisons, Bin Chen Foo, who later came to the scene. Both Neo and Bin then brought the deceased to Changi Prison Hospital where he was examined by Dr. Naranjan Singh. Resuscitation was carried out but with no success, and the deceased was pronounced dead at 9.40 a.m.

In the meanwhile, all the detainees were assembled at the mess hall and the rehabilitation officer, Tham Kin Yuen, went there to conduct a search on all the detainees. When he was about to commence the search on the detainees, who were squatting or sitting, the accused stood up and admitted he was involved in the fight; he walked to Tham and showed him an injury on his right hand, which was at the web between his thumb and the index finger. Tham asked the accused what weapon he used and the accused replied that it was a piece of glass. He then led Tham to a spot near the toilet at the Sepak Takraw Court, and picked up a piece of glass (P62) from a muddy pool of water and handed it to Tham who took possession of it. Tham and the accused then returned to the mess hall and there they met Kwa Chee Ngee, Head Provost of the prison. Kwa noticed that the accused's left eye was swollen and his right hand was bleeding. He asked Tham to bring the accused to the clinic for treatment. Tham and Burha Nudin bin Darood, the chief warder, escorted the accused to the clinic which was outside "G" Hall at or near the main gate.

Kwa conducted a search at the basketball court and noticed a patch of blood on the court. When he was combing the area he found a pointed piece of glass (P54) and also a smaller piece of glass (P55) on the grass verge. Kwa then recalled that the clothes the accused was wearing (when he saw the accused) were clean. He immediately telephoned Tham on the intercom, the latter being at the clinic, to enquire from the accused the whereabout of the clothes he was wearing when he was engaged in the fight. Shortly thereafter, Tham brought the accused back to"G" Hall to see Kwa, and the accused led them to a flower bed near the Sepak Takraw Court. There the accused removed some dry grass and took out a T-shirt and a face towel; both were stained with blood. They were then left on the ground as instructed by Kwa.

As instructed by Kwa, Tham and the chief warder then escorted the accused back to the clinic, and the accused was treated by a male nurse. There, they met D.F. Victor, Superintendent of the Medium Security Prison, who instructed the chief warder to escort the accused to Changi Prison Hospital for medical treatment and thereafter to place him in an isolated cell. The accused was accordingly brought to Changi Prison Hospital, and was examined by Dr Naranjan Singh who found that he had the following injuries:

(a) a left blue eye

(b) 2.5 cm laceration in the web between the right thumb and right index finger.

Dr Naranjan Singh testified that the injury to the eye could have been caused by a punch, and the punch could be delivered with considerable force. There was a contusion round the eye caused by bleeding in the tissues. But no injury was caused to the eye ball. As for the laceration in the hand of the accused, Dr Naranjan Singh said that it could have been caused by any cutting weapon such as P54; it could have been caused by movement of the glass. The wound needed stitching.

The investigation officer in charge of this case is Inspector Johnny Ho. He went to Changi Prison at about 1.40 p.m. on the same day of the incident and took over the investigation. He inspected the body of the deceased. Later he went to the Medium Security Prison and inspected the basketball court at "G" hall and instructed photographs to be taken. He took possession of the 2 pieces of glass (P54 and P55) on the grass verge next to the basketball court; P54 is the larger piece of glass which is pointed and was bloodstained. He also took possession of the bloodstained T-shirt (P52) and face towel (P53). Later, Tham Kin Yuen handed to him the piece of glass (P62) which the former had taken from the accused. It was

demonstrated before us by Inspector Ho that all the 3 pieces of glass, P54, P55 and P62 originally formed one piece of glass having a length of about 30 cm. This was not disputed by Counsel for the accused.

Inspector Ho collected blood swabs from various spots in the basketball court and the surrounding area. He also collected a test tube of blood taken from the deceased at the mortuary. All these blood samples and the following bloodstained items, namely: the T-shirt (P52), face towel (P53) and the pointed piece of glass (P55), were sent to the department of scientific services. In addition, samples of blood were taken from the accused by Mrs Tan Wai Fun, a scientific officer of the Department of Scientific Services. All the blood swabs and blood samples were examined and, in so far as material, the results were as follows:

(a) the deceased's blood group was O, PGM2-1;

(b) the pointed piece of glass (P54) was stained with blood of the group O, PGM2-1;

(c) the blood swabs from the basketball court and the surrounding area, in so far as could be determined, were human blood belonging to group O, PGM2-1;

(d) the accused's blood group is B, PGM1;

(e) the face towel (P53) was stained with blood of the group B, PGM1.

At about 8.15 p.m. on the same day, Inspector Ho went to Changi Prison with one Wu Nan Yong, who is a certificated interpreter, presently attached to Central Narcotics Bureau. With the assistance of Wu, Inspector Ho recorded a statement from the accused under s. 121 (6) of the Criminal Procedure Code. The whole statement was not objected to by Counsel for the accused and was admitted in evidence. The statement is as follows.

> On 18 March 1986 at about 12.10 p.m. the deceased whom I called him "Ah Lek" told me that I look like a Japanese actor in a television series. I told him not to say that and to call me by that name "Si Tai Lang" as this would humiliate me. The deceased told me not to be so serious about this remark. We were about to come to a fight, but both of us were pulled away by other inmates. Each of us went our way. On the same day at about 4 p.m. I went to the rear of the vacant hut which is behind the basketball (court). I took a piece of glass pane and a stick which were on the ground. I placed the glass pane on a plastic bag and I knocked it with the stick, until the glass pane became the shape of a knife with a pointed end. I then hid the glass weapon below the basin which was behind the stage in the dining hall. I prepare this weapon as I was afraid that the deceased might trouble with me later on.
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> On 19 March 1986 at about 8.30 a.m. we were allow to come out of the dormitory for exercise. I jogged a few rounds around the perimeter of "G" Hall. I then exercise myself beside the Sepak Takraw court. I then walked along the grass patch beside the basketball court. I saw the deceased "Ah Lek" was walking about in the basketball court. We then stared at each other. I then went and took the glass weapon which I hid below the basin. I hold the glass weapon in my right hand. I stood on the grass patch just behind the basketball goal post. The deceased then come up to me, and asked me what I intend to do now. In return I asked the deceased the same question. He delivered a punch on my left eye with his right hand. I then took the glass weapon and slashed the deceased several times. While I was slashing the deceased I was stepping backwards, as the deceased kept charging at me. I fell down, and the deceased kept on charging at me. Immediately I got up and continued slashing at the deceased. While I was slashing at the deceased he punched aimlessly at me. The deceased then retreated backwards and sat on the ground at the basketball hall. At this point I then walked towards the toilet which was next to the dining hall. I then threw the end of the glass weapon into a pool of mud. I washed my hand as it was bleeding. I then took off my 'T' shirt and a towel which I had earlier cleaned the blood, and I placed them in the flower bed beside the fence

and covered them with dug grass. I put on a new "T" shirt. I then joined the fall in, in the dining hall, as the gong sounded. We were told to take off our shirt. I then came out from the assembly and told the officer that I was involved in the fight. I then brought the officer to the recovery of the broken glass weapon from the pool of mud next to the toilet. I was given medical treatment on my right hand and later brought to Changi prison.

Dr. Wee Keng Poh, the forensic pathologist of General Hospital, performed an autopsy on the deceased on 19 March 1986 at 11.45 p.m. He found multiple wounds sustained by the deceased, and except for the fatal wound all were minor or superficial wounds. The fatal wound was the stab wound at the chest, and it is best to describe this in the words of Dr. Wee:

***Fatal Stab Wound***

Fatal stab wound right anterolateral chest wall, 5 cm. to the right of the midline and 130 cm from the level of the heel and 14.5 cm from the level of the epigastrium. The wound is situated above and medial to the right nipple, and in the mid clavicle line.

The skin wound measures 2.5 cm along the long axis and 1.1 cm along its widest point. The wound edges appear jagged though sharp.

***Penetration:***

Through the full thickness of the skin, right anterior chest wall, into the right pleural cavity through the right 4th intercostal space, cutting the middle lobe of right lung anteriorly, into the pericadial sac, and the right main pulmonary artery.

***Direction:***

From front to back, downwards and medially.

***Depth:*** 10.5 cm.

Dr. Wee said that the injuries were consistent with being caused by a sharp instrument like the piece of glass, P54, and moderate force would be required to inflict this wound. In his opinion, this wound would be sufficient in the ordinary course of nature to cause death, and death would have followed within minutes after it was inflicted.

At the close of the case for the prosecution, Counsel for the accused submitted that there was no case to answer. He said that the prosecution had failed to adduce evidence of primary facts to establish each essential element in the offence with which the accused is charged. He rested his submission on two grounds:

(i) first, the prosecution had failed to prove that the death of the deceased was caused by or in consequence of an act or conduct of the accused, and

(ii) secondly, the prosecution had also failed to prove that the accused had the requisite intention required under s. 302 of the Penal Code.

On the first ground, he contended that the prosecution had not led any evidence that the fatal wound inflicted on the deceased was "beyond reasonable doubt" delivered by the accused; in other words there was no "cogent evidence" that the accused caused the death of the deceased. As regards the second ground, he relied on the evidence that it was the deceased who first attacked the accused; the deceased punched the accused on the left eye and provoked the accused and continued with the provocation by charging at the accused "swinging his arms". In retaliation the accused used the piece of glass; he lost selfcontrol totally and he reacted in the face of continued provocation in a reasonable manner". His response was in the circumstances totally proportionate to the degree of provocation. The

conclusion, Counsel submitted, was that the prosecution had not adduced "any cogent evidence at all" to prove that the accused had the requisite intention for the offence with which he was charged.

We are unable to accept such arguments. In our opinion, the prosecution has adduced evidence of primary facts which are not inherently incredible and which, if accepted, would establish the essential elements of the alleged offence. Following the decision in *Haw Tua Tau v. Public Prosecutor* [1981] CLJ (Rep) 11 we acted on the presumptions (a) that all such evidence of primary facts was true and (b) that there would be nothing to displace the inferences as to further facts or to the state of mind of the accused which would reasonably be drawn from the primary facts in the absence of further explanation. At that stage we should not decide whether the prosecution has proved beyond reasonable doubt that the accused is guilty of the charge. It is helpful to remind ourselves of the following passage from the judgment of Lord Diplock in *Haw Tua Tau* case (*supra*) at p. 52; -

> At the conclusion of the prosecution's case what has to be decided remains a question of law only. As decider of law, the judge must consider whether there is some evidence (not inherently incredible) which, if he were to accept it as accurate, would establish each essential element in the alleged offence. If such evidence as respects any of those essential elements is lacking, then, and then only, is he justified in finding "that no case against the accused has been made out which if unrebutted would warrant his conviction," within the meaning of s. 188(i). Where he has not so found, he must call upon the accused to enter upon his defence, and as decider of fact must keep an open mind as to the accuracy of any of the prosecution's witnesses until the defence has tendered such evidence, if any, by the accused or other witnesses as it may want to call and Counsel on both sides have addressed to the judge such arguments and comments on the evidence as they may wish to advance.

We therefore held that the prosecution had made out a case which, if unrebutted, would warrant a conviction of the offence with which the accused is charged. We called upon the accused to enter on his defence.

The accused elected to give evidence. He admitted that on 18 March 1986 at the mid-day muster in the mess hall the deceased called him by the name "Mee Tai Lang" to which he objected; he was annoyed and felt humiliated. He also admitted that following that there were 2 occasions they both stood up and wanted to go to the back of the hall but were restrained from doing so by the other detainees. He said that his purpose of going to the back of the hall was to talk to the deceased and to settle the matter, though he knew or understood that deceased's purpose of going to the back was to fight with him. He said that when the warder came in he saw the deceased standing and the warder spoke to the deceased. Later ASP Neo came and took the attendance of the detainees and thereafter took the deceased away.

He said he was afraid that afternoon as the deceased had been brought away by Neo and had not been released. His fear was that when the deceased returned, the deceased would assault or beat him. He knew that the deceased had beaten other persons at Changi Prison. The deceased was of bigger size and was stronger than he. At about 4 p.m. he went to the back of an empty shed at the basketball court and found a piece of glass. He brought the piece of glass into the shed and put it on top of a plastic bag, and with a piece of wood he knocked the piece of glass into a shape with a pointed end like a knife as shown in the photograph P35. He then covered the piece of glass with a rag and hid it underneath the sink, as shown in the photograph P21, which was near the mess hall and he left. Nothing further happened between him and the deceased that day.

On 19 March 1986 after breakfast the accused did some exercise; he jogged round the perimeter of "G" Hall and did free-arm exercise and twisting of the body and also some push-ups. He had a face towel (P53) with him; it was tucked inside his waist-band. After some exercise he stood at the grass verge near the basketball court to cool himself. There he saw the deceased walking round the basketball court and then walking near to him and staring at him. He also stared at the deceased and was frightened that the deceased might assault him. He therefore went to take the piece of glass he had hidden, and equipped with it he returned to the grass verge. He was holding the piece of glass with the face towel (P53) in his right hand; he was holding it in a stabbing grip with the pointed end facing backwards. The deceased walked around and came and stood near to him about 3 to 4 feet from him. The deceased asked what the accused wanted, to which the latter replied; "Can we talk", intending to settle the matter. The deceased then asked in loud and angry tone: "Do you really want it? And following this the deceased punched the accused's left eye. The latter was thrown back; he felt pain and his vision was blurred. The deceased then charged forward, and the accused holding the piece of glass swung his arm at random. At one point the accused fell but stood up quickly. At that stage, while the accused was holding the piece of glass at his chest with the pointed end facing outwards, the deceased rushed at him and grabbed hold of the accused from the front. The deceased then released the hold, moved backwards, squatted down and fell on the basketball court. When the deceased fell backwards, the accused did not attack him. The accused said he did not intend to stab the deceased and did not know how the deceased suffered the fatal wound at the chest.

The accused was cross-examined at great length by Mr. Neighbour for the prosecution. He explained that the reason for getting hold of the piece of glass and knocking it into the shape resembling that of a knife was that he was afraid of the deceased. The deceased had been taken away by ASP Neo for questioning and had not been released. He was afraid that when the accused returned, he would beat him up.

As for the incident of the fight he explained that he armed himself with the piece of glass in order to protect himself and not to attack the deceased. The deceased was bigger and stronger than he, and he was no match for the deceased. During the fight he was holding the piece of glass (in a stabbing grip) and swinging it at random. He could not account or explain how he inflicted the fatal injury on the deceased.

Mr Fernando for the accused called Dr Wong Yip Chong, the consultant psychiatrist, to give expert evidence. Dr Wong's evidence was based on the interview he had with the accused on the morning of 14 September and on what Mr Fernando told him. His conclusion is as follows:

> It is well known that a blow onto the head of some force could lead to a variable degree of impairment of consciousness (please see appendix 1).
>
> Associated with the impairment of consciousness would be an accompanying impairment of mental functions.
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> That his eye was also injured aggravated this mental function impairment. His depth vision was reduced from 3 Dimensional to 2 Dimensional.
>
> Taking the accused's injuries as a whole and the description he presented, the psychological disturbances following his injuries would be consistent with his claim that he did not intend to kill the deceased and that he was unaware that he had stabbed the deceased.

On a review of the evidence adduced by the prosecution and the defence, there is really no dispute on the evidence of material primary facts. First, on 18 March 1986 there was a quarrel between the deceased and the accused which arose out of the deceased calling the accused "Mee Tai Lang", to which the accused took exception. The deceased was found by the warder to be involved in a quarrel and was subsequently taken away for questioning and put in an isolation ward for some 4 hours. While the deceased was in isolation the accused found a piece of glass at the rear of an empty shed, and using a piece of wood he knocked it into the shape of a knife with a pointed end. He then hid the pointed piece of glass beneath the sink near the mess hall. Next came the fateful day, 19 March 1986. After breakfast, both the accused and the deceased were doing exercise at or near the basketball court. They met at the grass verge near the basketball court and stared at each other and arising from that the accused went and took the piece of glass which he had previously hidden. The accused returned to the basketball court, holding the piece of glass. There he met the deceased and they stared at each other again. The deceased asked the accused: "What" in Hokkien and the accused replied "Can we talk?" also in Hokkien. The deceased then asked: "Do you really want it?" and immediately after that punched the accused on the left eye. Following that they both fought, the deceased with his barehands and the accused with the piece of pointed glass held in his right hand with a towel. The deceased then withdrew and fell on his back at the basketball court. He sustained multiple stab or slash wounds and one fatal stab wound at the chest. These were caused by the piece of glass held by the accused during the fight. The accused sustained an injury on the left eye - a "blue black eye" - which was caused by the punch delivered by the deceased and a deep cut in his right hand at the web which was caused by the piece of glass being held by him during the fight. After the fight the original piece of glass used by the accused was found to have broken into 3 pieces, (P54, P55 and P62).

Several defences have been put forward by Mr Fernando on behalf of the accused, and it is necessary to consider each of them *seriatim.* First, Mr Fernando submits that there was no evidence that the accused inflicted the fatal injury on the deceased or that the accused caused the death of the deceased on 19 March 1986, though he accepts that the deceased died as a result of the fatal wound on his chest caused in the course of the fight with the accused. In support he relied on the medical evidence of Dr. Wee Keng Poh that the fatal injury could have been caused either by the accused thrusting the piece of glass into the deceased's chest when the latter lunged at him or by the deceased rushing into the piece of glass held out by the accused. But Dr Wee also said that in either event, the accused must have held the glass rigidly. Dr. Wee accepted that these were 2 equal possibilities. Mr Fernando next referred to the evidence of the accused that during the fight he fell on his knee and as he got up he held the piece of glass at his chest with the pointed end facing outwards and the deceased rushed at him and grabbed him following which there was a struggle and then the deceased withdrew, walked backwards, squatted down and fell on his back. On the basis of this evidence he submits that the accused did not stab the deceased at the chest and caused the latter's death. We are unable to accept this submission. First, as the deceased was fighting bare-handed with the accused who was armed with a knife-shaped glass it is too naive even to suggest that the deceased would charge or rush at the accused who was then holding out the weapon. Secondly, assuming that the deceased did charge at the accused and the latter held out the weapon rigidly towards the deceased, that, in our view, would be tantamount to the accused stabbing the deceased with the weapon. At any rate, in our view, that fatal injury could not have been inflicted in that way. It is true that there was no direct evidence bearing on that point. But there are sufficient primary facts from which an inference

can reasonably be drawn. There was a fight between the deceased and the accused; the deceased was fighting with his bare hands and the accused was armed with a pointed weapon. The accused who had received a rather severe punch on his left eye must be swinging at random his right hand which was holding the weapon. The deceased's immediate objective must be to close in on the accused and get control of the weapon. In attempting to grab the weapon the deceased received several minor stab or slash wounds in his chest, abdomen and arms - and later both of them must be at close quarters grappling with each other; the deceased grabbing or seeking to grab the weapon and the accused resisting or avoiding the grab of the deceased, and in the course of struggling for the weapon at close quarters, the accused inflicted the fatal wound on the deceased. The accused must have stabbed the deceased with a backhand stroke from the top downwards. That was the direction of the wound according to Dr. Wee. We are satisfied beyond reasonable doubt that the accused inflicted the fatal injury on the deceased.

Secondly, Mr. Fernando submits that the prosecution has not shown beyond reasonable doubt that the accused possessed the necessary intention or knowledge to sustain an offence under s. 299 of the Penal Code. This submission plainly cannot be sustained in the circumstances of the case. The accused used a piece of glass of about 30 cm. in length; long and triangular in shape and has a pointed end, resembling very much a knife. It is quite thick, and in fact is part of a window glass pane. In that form it is a dangerous weapon; it certainly can be used to kill a person or cause bodily injury likely to cause death. Though the edges are blunt as Mr Fernando sought to demonstrate more than once, they can cut. This was proved by the accused receiving a severe cut in his right hand notwithstanding that he was holding it with a towel. With that weapon the accused stabbed the deceased at the chest and that stab was delivered with some force; the weapon penetrated through the right chest wall cutting the middle lobe of the right lung anteriorly into the pericardial sac and the right main pulmonary artery. In these circumstances, it is ludicrous to suggest that the accused had no intention of causing such bodily injury on the deceased as is likely to cause death or had no knowledge that he was likely by that act to cause the death of the deceased. We are satisfied beyond reasonable doubt that the accused had such intention or knowledge. In this connection we do not think that any weight should be given to the evidence of Dr Wong Yip Chong. He did not examine the eye injury of the accused at the material time, and his conclusion was based principally on what he was told on the morning of 14 September 1988.

Thirdly, it is submitted that the accused is entitled to be acquitted of the charge because he inflicted the injuries on the deceased in the course of exercising his right of private defence: see ss. 96 and 100 of the Penal Code. The obstacle in the way of this argument is s. 99(3) of the Penal Code which provides that there is no right of private defence in cases where there is time to have recourse to the protection of the public authorities. The accused was at the time in prison and on the morning of 19 March 1986 when he met the deceased, assuming he was afraid of the deceased on the first occasion, he would have time to have recourse to the protection of the prison officers. Under s. 102 of the Penal Code the right of private defence commences as soon as reasonable apprehension of danger to body arises from an attempt or threat to commit the offence. So, in this case at the time when the accused first encountered the deceased and they were staring at each other, and if the accused was under an apprehension, that the deceased might beat him he could have recourse to the protection of the prison officers instead of proceeding to collect the piece of glass he had hidden. We therefore hold that on that ground the accused was not entitled to exercise the right of private defence.

Failing all the defences which have been put forward, Mr Fernando then submits that the evidence adduced falls within Exceptions 1, and 2 and 4 of s. 300 of the Penal Code and therefore the accused has not committed the offence of murder but culpable homicide not amounting to murder. In our opinion, Exception 1 has no application, as this is not a case where the accused caused the death of the deceased, whilst deprived of the power of self-control by any grave and sudden provocation on the part of the deceased. There is no question that the accused and the deceased were engaged in a fight in the course of which the deceased was killed. It is true that the deceased attacked the accused first but the fatal injury on the deceased cannot in the circumstances be said to be inflicted by the accused by way of retaliation whilst the latter was deprived of the power of self-control. This is a case of a death being caused in the course of a fight.

Exception 2 relied upon by Mr Fernando also has no application. We have held that the accused in the circumstances was not entitled to rely on his right to private defence, and therefore there is no question of the accused exceeding the power given by law in exercising his right of private defence.

There remains Exception 4 and this is the only Exception which, in our view, merits serious consideration in this case. Exception 4 is as follows:

> Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner.

It is argued by Mr. Neighbour for the prosecution that this Exception is not available as there was premeditation on the part of the accused. He relies mainly on the piece of glass which, to use his words, "the accused had fashioned into a knife". The fact that the accused had obtained a piece of glass and made it into a shape with a pointed end resembling that of a knife and armed himself with it before the fight with the deceased does give rise to an inference of premeditation on the accused's part. In *Kirpal Singh v. The State* [1951] AIR 38 Punjab 137 in which the same exception to s. 300 of Indian Penal Code was raised, Bhandari J said, at p. 140:

> Exception 4 comes into play only if death is caused without premeditation. To constitute a premeditated killing it is necessary that the accused should have reflected with a view to determine whether he would kill or not; and that he should have determined to kill as the result of that reflection; that is to say, the killing should be a pre-determined killing upon consideration and not a sudden killing under the momentary excitement and impulse of passion upon provocation given at the time or so recently before as not to allow time for reflection. Premeditation may be established by direct or positive evidence or by circumstantial evidence. Evidence of premeditation can be furnished by former grudges or previous threats and expressions of ill-feelings; by acts of preparation to kill, such as procuring a deadly weapon or selecting a dangerous weapon in preference to one less dangerous, and by the manner in which the killing was committed. For example, repeated shots, blows and other acts of violence are sufficient evidence of premeditation. Premeditation is not proved from the mere fact of a killing by the use of a deadly weapon but must be shown by the manner of the killing and the circumstances, under which it was done or from other facts in evidence.

The accused, however, had an explanation which is consistent with his claim that he had not planned to kill the deceased. He said that he was afraid that the deceased who had been detained by the prison officers might on his release assault or beat him, presumably because he was the cause of the deceased's detention and questioning by the prison officers; that the deceased was of a bigger size and was stronger than he; that he knew that the deceased

had beaten up other prisoners on previous occasions; that he therefore prepared the piece of glass for his own protection and that when he met the deceased on the morning of 19 March 1986 he was again afraid that the deceased might assault or beat him and he therefore armed himself with the piece of glass for self-protection. Having regard to the particular circumstances in this case, his explanation is, in our view, not entirely groundless; it is a plausible one, which we accept. On this basis the inference of premeditation is displaced, and therefore there was no premeditation to kill on the part of the accused. There was evidence that a sudden fight broke out; it was started by the deceased punching the accused's left eye. The accused used the piece of glass as a weapon in the fight, while the deceased fought with his bare-hands. There was evidence that they were grappling at each other in the course of which the fatal wound was inflicted. Having regard to all the circumstances, we do not find that the accused in using such a weapon took undue advantage; nor did he act in a cruel or unusual manner. Immediately when the deceased withdrew, the accused did not follow up and attack him with the weapon. On a balance of probabilities we find that the accused has made out a case falling within Exception 4 to s. 300 of the Penal Code.

Accordingly we find the accused guilty of the offence of culpable homicide not amounting to murder by causing the death of the deceased punishable under s. 304(b) of the Penal Code.

Also found at [1989] 1 CLJ 88